

ASSEMBLY BILL

No. 668

Introduced by Assembly Member Lieu

February 25, 2009

An act to amend Section 626.9 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 668, as introduced, Lieu. Firearms: gun-free school zones.

Existing law, subject to exceptions, provides that it is an offense for any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority. Existing law defines "school zone" for these purposes as an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.

This bill would extend that distance to 1,500 feet from the grounds of the public or private school.

By expanding the scope of an existing offense, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 626.9 of the Penal Code is amended to
2 read:

3 626.9. (a) This section shall be known, and may be cited, as
4 the Gun-Free School Zone Act of 1995.

5 (b) Any person who possesses a firearm in a place that the
6 person knows, or reasonably should know, is a school zone, as
7 defined in paragraph (1) of subdivision (e), unless it is with the
8 written permission of the school district superintendent, his or her
9 designee, or equivalent school authority, shall be punished as
10 specified in subdivision (f).

11 (c) Subdivision (b) does not apply to the possession of a firearm
12 under any of the following circumstances:

13 (1) Within a place of residence or place of business or on private
14 property, if the place of residence, place of business, or private
15 property is not part of the school grounds and the possession of
16 the firearm is otherwise lawful.

17 (2) When the firearm is an unloaded pistol, revolver, or other
18 firearm capable of being concealed on the person and is in a locked
19 container or within the locked trunk of a motor vehicle.

20 This section does not prohibit or limit the otherwise lawful
21 transportation of any other firearm, other than a pistol, revolver,
22 or other firearm capable of being concealed on the person, in
23 accordance with state law.

24 (3) When the person possessing the firearm reasonably believes
25 that he or she is in grave danger because of circumstances forming
26 the basis of a current restraining order issued by a court against
27 another person or persons who has or have been found to pose a
28 threat to his or her life or safety. This subdivision may not apply
29 when the circumstances involve a mutual restraining order issued
30 pursuant to Division 10 (commencing with Section 6200) of the
31 Family Code absent a factual finding of a specific threat to the
32 person's life or safety. Upon a trial for violating subdivision (b),
33 the trier of a fact shall determine whether the defendant was acting
34 out of a reasonable belief that he or she was in grave danger.

35 (4) When the person is exempt from the prohibition against
36 carrying a concealed firearm pursuant to subdivision (b), (d), (e),
37 or (h) of Section 12027.

1 (d) Except as provided in subdivision (b), it shall be unlawful
2 for any person, with reckless disregard for the safety of another,
3 to discharge, or attempt to discharge, a firearm in a school zone,
4 as defined in paragraph (1) of subdivision (e).

5 The prohibition contained in this subdivision does not apply to
6 the discharge of a firearm to the extent that the conditions of
7 paragraph (1) of subdivision (c) are satisfied.

8 (e) As used in this section, the following definitions shall apply:

9 (1) “School zone” means an area in, or on the grounds of, a
10 public or private school providing instruction in kindergarten or
11 grades 1 to 12, inclusive, or within a distance of ~~1,000~~ 1,500 feet
12 from the grounds of the public or private school.

13 (2) “Firearm” has the same meaning as that term is given in
14 Section 12001.

15 (3) “Locked container” has the same meaning as that term is
16 given in subdivision (c) of Section 12026.1.

17 (4) “Concealed firearm” has the same meaning as that term is
18 given in Sections 12025 and 12026.1.

19 (f) (1) Any person who violates subdivision (b) by possessing
20 a firearm in, or on the grounds of, a public or private school
21 providing instruction in kindergarten or grades 1 to 12, inclusive,
22 shall be punished by imprisonment in the state prison for two,
23 three, or five years.

24 (2) Any person who violates subdivision (b) by possessing a
25 firearm within a distance of ~~1,000~~ 1,500 feet from the grounds of
26 a public or private school providing instruction in kindergarten or
27 grades 1 to 12, inclusive, shall be punished as follows:

28 (A) By imprisonment in the state prison for two, three, or five
29 years, if any of the following circumstances apply:

30 (i) If the person previously has been convicted of any felony,
31 or of any crime made punishable by Chapter 1 (commencing with
32 Section 12000) of Title 2 of Part 4.

33 (ii) If the person is within a class of persons prohibited from
34 possessing or acquiring a firearm pursuant to Section 12021 or
35 12021.1 of this code or Section 8100 or 8103 of the Welfare and
36 Institutions Code.

37 (iii) If the firearm is any pistol, revolver, or other firearm capable
38 of being concealed upon the person and the offense is punished as
39 a felony pursuant to Section 12025.

1 (B) By imprisonment in a county jail for not more than one year
2 or by imprisonment in the state prison for two, three, or five years,
3 in all cases other than those specified in subparagraph (A).

4 (3) Any person who violates subdivision (d) shall be punished
5 by imprisonment in the state prison for three, five, or seven years.

6 (g) (1) Every person convicted under this section for a
7 misdemeanor violation of subdivision (b) who has been convicted
8 previously of a misdemeanor offense enumerated in Section
9 12001.6 shall be punished by imprisonment in a county jail for
10 not less than three months, or if probation is granted or if the
11 execution or imposition of sentence is suspended, it shall be a
12 condition thereof that he or she be imprisoned in a county jail for
13 not less than three months.

14 (2) Every person convicted under this section of a felony
15 violation of subdivision (b) or (d) who has been convicted
16 previously of a misdemeanor offense enumerated in Section
17 12001.6, if probation is granted or if the execution of sentence is
18 suspended, it shall be a condition thereof that he or she be
19 imprisoned in a county jail for not less than three months.

20 (3) Every person convicted under this section for a felony
21 violation of subdivision (b) or (d) who has been convicted
22 previously of any felony, or of any crime made punishable by
23 Chapter 1 (commencing with Section 12000) of Title 2 of Part 4,
24 if probation is granted or if the execution or imposition of sentence
25 is suspended, it shall be a condition thereof that he or she be
26 imprisoned in a county jail for not less than three months.

27 (4) The court shall apply the three-month minimum sentence
28 specified in this subdivision, except in unusual cases where the
29 interests of justice would best be served by granting probation or
30 suspending the execution or imposition of sentence without the
31 minimum imprisonment required in this subdivision or by granting
32 probation or suspending the execution or imposition of sentence
33 with conditions other than those set forth in this subdivision, in
34 which case the court shall specify on the record and shall enter on
35 the minutes the circumstances indicating that the interests of justice
36 would best be served by this disposition.

37 (h) Notwithstanding Section 12026, any person who brings or
38 possesses a loaded firearm upon the grounds of a campus of, or
39 buildings owned or operated for student housing, teaching,
40 research, or administration by, a public or private university or

1 college, that are contiguous or are clearly marked university
2 property, unless it is with the written permission of the university
3 or college president, his or her designee, or equivalent university
4 or college authority, shall be punished by imprisonment in the state
5 prison for two, three, or four years. Notwithstanding subdivision
6 (k), a university or college shall post a prominent notice at primary
7 entrances on noncontiguous property stating that firearms are
8 prohibited on that property pursuant to this subdivision.

9 (i) Notwithstanding Section 12026, any person who brings or
10 possesses a firearm upon the grounds of a campus of, or buildings
11 owned or operated for student housing, teaching, research, or
12 administration by, a public or private university or college, that
13 are contiguous or are clearly marked university property, unless
14 it is with the written permission of the university or college
15 president, his or her designee, or equivalent university or college
16 authority, shall be punished by imprisonment in the state prison
17 for one, two, or three years. Notwithstanding subdivision (k), a
18 university or college shall post a prominent notice at primary
19 entrances on noncontiguous property stating that firearms are
20 prohibited on that property pursuant to this subdivision.

21 (j) For purposes of this section, a firearm shall be deemed to be
22 loaded when there is an unexpended cartridge or shell, consisting
23 of a case that holds a charge of powder and a bullet or shot, in, or
24 attached in any manner to, the firearm, including, but not limited
25 to, in the firing chamber, magazine, or clip thereof attached to the
26 firearm. A muzzle-loader firearm shall be deemed to be loaded
27 when it is capped or primed and has a powder charge and ball or
28 shot in the barrel or cylinder.

29 (k) This section does not require that notice be posted regarding
30 the proscribed conduct.

31 (l) This section does not apply to a duly appointed peace officer
32 as defined in Chapter 4.5 (commencing with Section 830) of Title
33 3 of Part 2, a full-time paid peace officer of another state or the
34 federal government who is carrying out official duties while in
35 California, any person summoned by any of these officers to assist
36 in making arrests or preserving the peace while he or she is actually
37 engaged in assisting the officer, a member of the military forces
38 of this state or of the United States who is engaged in the
39 performance of his or her duties, a person holding a valid license
40 to carry the firearm pursuant to Article 3 (commencing with Section

1 12050) of Chapter 1 of Title 2 of Part 4, or an armored vehicle
2 guard, engaged in the performance of his or her duties, as defined
3 in subdivision (e) of Section 7521 of the Business and Professions
4 Code.

5 (m) This section does not apply to a security guard authorized
6 to carry a loaded firearm pursuant to Section 12031.

7 (n) This section does not apply to an existing shooting range at
8 a public or private school or university or college campus.

9 (o) This section does not apply to an honorably retired peace
10 officer authorized to carry a concealed or loaded firearm pursuant
11 to subdivision (a) or (i) of Section 12027 or paragraph (1) or (8)
12 of subdivision (b) of Section 12031.

13 SEC. 2. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.